

## Centers for Medicare & Medicaid Services, HHS

## § 423.772

money penalty once the administrative decision is final.

[72 FR 68735, Dec. 5, 2007]

### **§ 423.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.**

(a) *Determining the appropriate amount of any penalty.* In determining the amount of penalty imposed under 423.752(c)(1), CMS will consider as appropriate:

- (1) The nature of the conduct;
- (2) The degree of culpability of the Part D sponsor;
- (3) The harm which resulted or could have resulted from the conduct of the Part D sponsor;
- (4) The financial condition of the Part D sponsor;
- (5) The history of prior offenses by the Part D sponsor or principals of the Part D sponsor; and,
- (6) Such other matters as justice may require.

(b) *Amount of penalty.* CMS may impose civil money penalties in the following amounts:

(1) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more Part D enrollees—up to \$25,000 for each determination.

(2) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more Part D enrollees, CMS may calculate a CMP of up to \$25,000 for each Part D enrollee directly adversely affected (or with a substantial likelihood of being adversely affected) by a deficiency.

(3) For each week that a deficiency remains uncorrected after the week in which the Part D sponsor receives CMS' notice of the determination—up to \$10,000.

(4) If CMS makes a determination that a Part D sponsor has terminated its contract other than in a manner described under 423.510 and that the Part D sponsor has therefore failed to substantially carry out the terms of the contract, \$250 per Medicare enrollee from the terminated Part D sponsor or plans at the time the Part D sponsor

terminated its contract, or \$100,000, whichever is greater.

[72 FR 68735, Dec. 5, 2007, as amended at 74 FR 1548, Jan. 12, 2009]

### **§ 423.762 Settlement of penalties.**

For civil money penalties imposed by CMS, CMS may settle civil money penalty cases at any time before a final decision is rendered.

[72 FR 68735, Dec. 5, 2007]

### **§ 423.764 Other applicable provisions.**

The provisions of section 1128A of the Act (except paragraphs (a) and (b)) apply to civil money penalties under this subpart to the same extent that they apply to a civil money penalty or procedure under section 1128A of the Act.

[70 FR 4525, Jan. 28, 2005. Redesignated at 72 FR 68735, Dec. 5, 2007]

## **Subpart P—Premiums and Cost-Sharing Subsidies for Low-Income Individuals**

### **§ 423.771 Basis and scope.**

(a) *Basis.* This subpart is based on section 1860D–14 of the Act.

(b) *Scope.* This subpart sets forth the requirements and limitations for payments by and on behalf of low-income Medicare beneficiaries who enroll in a Part D plan.

### **§ 423.772 Definitions.**

For purposes of this subpart, the following definitions apply:

*Applicant* means the Part D eligible individual applying for the subsidies available to subsidy eligible individuals under this subpart.

*Best available evidence* means evidence recognized by CMS as documentation or other information that is directly tied to State or Social Security Administration systems that confirm an individual's low-income subsidy eligibility status, and that must be accepted and used by the Part D sponsor to change low-income subsidy status.

*Family size* means the applicant, the spouse who is living in the same household, if any and the number of individuals who are related to the applicant or applicants, who are living in the same